

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SONIA POWELL,

Plaintiff,

v.

CITY OF PASCO, ET AL.,

Defendants.

NO: 4:16-CV-5071-TOR

ORDER ON PENDING MOTIONS

BEFORE THE COURT is Defendants City of Pasco, Robert Metzger, Kenneth R. Roske, Dean S. Perry, Brian Smith, and Jesus Romero's Motion to Dismiss (ECF No. 40) and Plaintiff's Motion for New Trial (ECF No. 41), Amended Motions (ECF Nos. 46; 48; 49), Notice of Intention (ECF No. 47), and Motions for Judgment as a Matter of Law (ECF Nos. 50; 51).<sup>1</sup> The matters were

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<sup>1</sup> As no trial has taken place, the Court is liberally construing the Motion for New Trial (ECF No. 41) as a motion for reconsideration, as Plaintiff complains that the previous Order on Motion to Dismiss (ECF No. 39) and Order on Motion

1 submitted without oral argument. As discussed further below, Defendants' Motion  
2 (ECF No. 40) is **GRANTED**. Plaintiff's Motions (ECF Nos. 41; 46; 47; 48; 49;  
3 50; 51) are **DENIED**.<sup>2</sup>

#### 4 **BACKGROUND**

5 Plaintiff Sonia Powell is appearing *pro se*, alleging a series of claims against  
6 numerous defendants. Plaintiff's claims can be categorized into (1) alleged  
7 mistreatment of Defendant by police officers before and leading up to her  
8 detention and subsequent release on April 9, 2013; (2) alleged mistreatment of  
9 Defendant by the prosecution and Plaintiff's attorney in the form of ineffective  
10 assistance of counsel, abuse of process, and malpractice, culminating with an  
11 Agreed Stipulation and Order of Continuance on April 23, 2013, which greatly  
12 reduced or eliminated the initial charges against her; and (3) alleged mistreatment

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14 \_\_\_\_\_  
14 to Disqualify Judge (ECF No. 35) were incorrectly decided. The Court is also  
15 construing Plaintiff's Notice of Intention (ECF No. 47) as a response to  
16 Defendant's Motion to Dismiss (ECF No. 40) and as a separate Motion for  
17 Sanctions.

18 <sup>2</sup> Although the Court is denying Plaintiff's Motions, the imbedded requests to  
19 consider "amended" pleadings are **GRANTED** to the extent the Court is  
20 considering them for this Order. *See, e.g.*, ECF Nos. 47-1; 48.

1 by the City of Pasco in responding to Plaintiff's public record requests, which she  
2 relies on for her argument that the statute of limitations is tolled; she does not  
3 assert a public records act claim. ECF No. 46 at 3-4. Plaintiff filed suit on May 2,  
4 2016, giving rise to the Defendants' defense that the statute of limitations has run,  
5 as all parties agree the relevant claims have a three year statute of limitations.  
6 Plaintiff now asserts the doctrine of equitable tolling preserves the "majority" of  
7 her claims. ECF No. 47 at 4.

8 **1. *Alleged mistreatment continuing until release***

9 At the base of her claims, Ms. Powell alleges a series of 42 U.S.C. § 1983  
10 violations arising from alleged mistreatment by police officers culminating in her  
11 arrest on April 8, 2013 and subsequent release the following day.<sup>3</sup> Plaintiff further  
12 alleges conspiracy in violation of 42 U.S.C. 1983 against Defendants Metzger,  
13 Roske, Smith, Perry, Romero, Does 1-5 and Wesley Powell, but provides no  
14 explanation of the alleged conspiracy or support thereof. ECF No. 37 at ¶¶ 202-  
15 213. The injuries here were known to Ms. Powell at that time, beginning the  
16 running of the statute of limitations, and the Court accordingly dismissed claims  
17 against certain defendants on that basis. *See* ECF No. 39.

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19 <sup>3</sup> A more complete description of the alleged mistreatment can be found at  
20 ECF No. 39 at 2-3.

1           **2. Complaints during prosecution**

2           Plaintiff also alleges Malicious Prosecution and Abuse of Process against  
3 Defendants Ellerd (Plaintiff's appointed counsel), Metzger, Roske, Smith, Perry,  
4 Romero, Does 1-5, and Wesley Powell, ECF No. 37 at ¶¶ 275-291, asserting they  
5 prosecuted her without probable cause and did so willfully, maliciously, in bad  
6 faith, and in reckless disregard of Plaintiff's rights, ECF No. 37 at ¶¶ 281-82.  
7 Plaintiff also asserts a claim of malpractice against Defendant Ellerd, despite  
8 Plaintiff's original charges being largely reduced or dropped per an Agreed  
9 Stipulation and Order of Continuance dated April 23, 2013, which dismissed the  
10 Simple Assault Domestic Violence charge and amended the Destruction or  
11 Removal of Property charge to Disorderly Conduct. ECF No. 28 at 2-3. Per this  
12 Agreement, all charges would be dismissed if plaintiff did not commit any criminal  
13 offenses for 12 months and paid the required costs. ECF No. 28 at 3.

14           According to Plaintiff, she was not aware of Defendant Ellerd's alleged  
15 deficiency at the time of signing the agreement:

16           Ms. Powell, however, believed on April 23[, 2013] that Defendant Ellerd  
17 made a good faith effort toward a demotion of the charges, not presented  
18 Ms. Powell with a new one. Review after the fact of the files related to Ms.  
Powell's case left Plaintiff no doubt that Defendant Ellerd knew or should  
have known her actions were unlawful on April 23[, 2013].

19 ECF No. 46 at 7-8.  
20

1 This account—which was relayed after this Court granted Defendant  
2 Ellerd’s Motion to Dismiss (ECF Nos. 28; 40)<sup>4</sup>—is contradicted by Plaintiff’s own  
3 statements:

4 Defendant Ellerd knew that Ms. Powell did not fully understand the charges  
5 and accusations the police made from their meeting. Ms. Powell vehemently  
6 denied the statement that was read to her in their meeting. Again, Defendant  
7 Ellerd did nothing.

8 ECF No. 47 at 4, fn. 1. As this demonstrates, Plaintiff knew of the basis of her  
9 complaints at that time. Accordingly, Defendant Ellerd’s Motion to Dismiss was  
10 granted, as the statute of limitations had run. ECF Nos. 28; 39.

### 11 **3. *Complaints after April 23, 2013***

12 According to Plaintiff, and as further discussed below, she was wrongfully  
13 denied (or delayed) access to public records. ECF No. 47 at 4. She claims this  
14 should toll several of her claims until the third week of May, 2013:

15 Typically, the clock for filing would begin to run were it not for the  
16 outright refusal of Defendant City Pasco to fulfill lawful public records  
17 requests. The clock stopped until the third week in May of 2013 on the  
18 majority of the claims. The clock continues to run on the claims of  
19 Malicious Prosecution, Abuse of Process and Conspiracy because a cause  
20 of action accrues when the last element is in place. Ms. Powell requested  
the Prosecutor’s Statement of Probable Cause, which Ms. Powell believes  
testifies to false facts in a manner similar to defendant Pasco police. Ms.  
Powell’s discovery of this document was delayed.

ECF No. 47 at 3-4 (citation omitted).

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<sup>4</sup> Plaintiff did not file a reply to the Motion.

1 As this indicates, Plaintiff requested documents, but already believed the  
2 Prosecutor's and nearly everyone else involved was lying, and wanted the  
3 Statement of Probable Cause merely for verification.

4 Plaintiff has since filed numerous documents with the Court, asserting a  
5 wide range of complaints, as further discussed below.

## 6 **DISCUSSION<sup>5</sup>**

### 7 **A. Miscellaneous Complaints**

#### 8 **1. *Alleged Court bias (motion to reconsider)***

9 Plaintiff asserts the Court erred in denying her Motion to Disqualify (ECF  
10 No. 34), arguing "28 U.S.C. § 455 is objective." ECF No. 46 at 6. The Court's  
11 Order recognized the objective aspect of the law, and fully considered whether  
12 graduation from the same law class is sufficient to establish impartiality from an  
13 objective perspective. ECF No. 35 at 3 ("The test . . . is 'Whether a reasonable  
14 person . . . would conclude that the judge's impartiality might reasonably be  
15 questioned.'"). The Court found Plaintiff's concern amounted to mere speculation  
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17 <sup>5</sup> The Court is ignoring Plaintiff's series of procedural errors and mislabeling,  
18 and will address the merits of Plaintiff's contentions. The Court's continued  
19 generosity for future motions by Plaintiff should not be presumed. This Order is  
20 redundant at points in order to ensure complete coverage of Plaintiff's claims.

1 and was not sufficient to meet her burden. ECF No. 35 at 3 (“Merely graduating in  
2 the same class and working in the same vicinity does not establish personal bias.”).  
3 Plaintiff’s request for reconsideration is unfounded. *Smith v. Clark Cnty. Sch.*  
4 *Dist.*, 727 F.3d 950, 955 (9th Cir. 2013) (The Court may reconsider its decision  
5 where it “(1) is presented with newly discovered evidence, (2) committed clear  
6 error or the initial decision was manifestly unjust, or (3) if there is an intervening  
7 change in controlling law.”).

## 8 **2. Rule 7.1**

9 Plaintiff contends that “[t]he application of Local Rule 7.1(d) is unlawful,  
10 represents an abuse of discretion, violates the due process and equal protections  
11 clauses of the Fourteenth Amendment . . . .” ECF No. 46 at 4. Plaintiff complains  
12 that “[o]nce a complaint is filed nothing relieves a court of its duties to attempt to  
13 understand and weigh an issue.” ECF No. 46 at 4. Apparently, Plaintiff’s  
14 complaint stems from a footnote in the Order on Motion to Dismiss (ECF No. 39)  
15 where the Court mentions LR 7.1(b). The Court considered the merits of the  
16 Motion rather than relying on the Local Rule. See ECF No. 39. Accordingly, the  
17 complained of rule was not even applied in Plaintiff’s case. Moreover, it is unclear  
18 how the local rule is unlawful, and Plaintiff has not presented a cogent argument  
19 otherwise.

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1       **3. Plaintiff's Third Amended Complaint**

2       Plaintiff also complains that “[i]n violation of FRCP 15(a)(2) the Court  
3 abused its discretion by failing to incorporate plaintiff’s allegations in her Third  
4 Amended Complaint . . . .” ECF No. 46 at 5. Plaintiff states that “[t]he Court  
5 should have admitted the changes in Ms. Powell’s Third Amended Complaint” and  
6 that “Ms. Powell’s claims against Defendant County and Defendant Ellerd  
7 appeared to have been dismissed as a result of the timeliness of filing.” ECF No.  
8 46 at 5. Notably, the Court considered Plaintiff’s Third Amended Complaint in its  
9 decision, noting that “[e]ven if the Third Amended Complaint were considered, no  
10 new allegations toll the statute of limitations.” ECF No. 39 at 2, fn. 1. Plaintiff’s  
11 concern is misguided. Fed. R. Civ. P. 15(a)(2) (Once amendment as a matter of  
12 course under Fed. R. Civ. P. 15(a)(1) is utilized, “a party may amend its pleading  
13 only with the opposing party’s written consent or the court’s leave.”) (emphasis  
14 added).

15       **4. Continued representation (motion for reconsideration)**

16       Plaintiff argues that the “causes of action against Defendant Ellerd did not  
17 accrue for Ineffective Assistance of Counsel, Malpractice . . . or Abuse of Process  
18 on April 23, 2013 as the Court stated.” ECF No. 49 at 7 (citing ECF No. 39).  
19 Plaintiff reasons that “[t]his is due, in part, to [the] fact that Defendant Ellerd  
20 continued to represent Ms. Powell through 2014.” ECF No. 49 at 7. Critically, the



1 only allegation relating to the above-mentioned causes of action involves conduct  
2 leading up to and including the signing of the Stipulated Order of Continuance  
3 dated April 23, 2013. There is no further allegation relating to how Defendant  
4 Ellerd committed any actionable wrong beyond that date.

5 Contrary to Plaintiff's contention, the accrual of the cause of action was not  
6 delayed merely because Defendant Ellerd continued to represent Plaintiff after the  
7 allegedly actionable conduct. Moreover, Plaintiff did not present this argument  
8 before the Court decided this issue and failed to file a reply, and such argument is  
9 not based on newly discovered evidence. *Smith v. Clark Cnty. Sch. Dist.*, 727 F.3d  
10 at 955 (The Court may reconsider its decision where it "(1) is presented with newly  
11 discovered evidence, (2) committed clear error or the initial decision was  
12 manifestly unjust, or (3) if there is an intervening change in controlling law.").

### 13 **B. Equitable Estoppel<sup>6</sup>**

14 "The doctrine of equitable estoppel . . . is based on the principle that a party  
15 'should not be allowed to benefit from its own wrongdoing.'" *Estate of Amaro v.*  
16 *City of Oakland*, 653 F.3d 808, 813 (9th Cir. 2011) (quoting *Collins v. Gee West*  
17 *Seattle LLC*, 631 F.3d 1001, 1004 (9th Cir. 2011)). The doctrine "focuses  
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19 <sup>6</sup> Plaintiff argues for equitable estoppel, but then shifts when arguing to an  
20 argument for tolling. ECF No. 47 at 3-4.

1 primarily on the actions taken by the defendant in preventing a plaintiff from filing  
2 suit.” *Amaro*, 653 F.3d at 813 (citing *Santa Maria v. Pac. Bell*, 202 F.3d 1170,  
3 1176 (9th Cir. 2000)). The plaintiff carries the burden of pleading and proving the  
4 following elements of equitable estoppel:

- 5 (1) knowledge of the true facts by the party to be estopped,
- 6 (2) intent to induce reliance or actions giving rise to a belief in that intent,
- 7 (3) ignorance of the true facts by the relying party, and
- 8 (4) detrimental reliance.

9 *Amaro*, 653 F.3d at 813 (citing *Bolt v. United States*, 944 F.2d 603, 609 (9th Cir.  
10 1991)). Additionally, when estoppel is sought against the government, “there must  
11 be affirmative misconduct (not mere negligence) and a serious injustice  
12 outweighing the damage to the public interest of estopping the government.” *Id.*

13 Plaintiff argues “the principle of equitable estoppel applies to Ms. Powell’s  
14 28 (sic) U.S.C. § 1983 actions . . . [because] timely filing [was] prevented by a  
15 defendant’s affirmative misrepresentations.” ECF No. 47 at 3 (citing *Amaro*, 653  
16 F.3d 808). Plaintiff explains:

17 In this case defendant’s efforts to thwart Ms. Powell’s pre-filing  
18 investigation fit neatly into Concealment . . . Defendant City’s dishonesty,  
19 coupled with Ms. Powell’s inexperience, compounded the difficulty of Ms.  
20 Powell’s investigation. Typically, the clock for filing would begin to run  
were it not for the outright refusal of Defendant City Pasco to fulfill lawful  
public records requests.

1 ECF No. 47 at 3-4 (citing *Wallace v. [City of Chicago]*, 440 F.3d 421 (7th Cir.  
2 2007); and RCW 4.16.180). Apparently, Plaintiff attempts to tie denied or delayed  
3 access to public records to equitable estoppel (and tolling, discussed below).

4 Plaintiff has not met her burden because she does not explain how an  
5 allegedly wrongful denial or delay evidences an intent to induce reliance, let alone  
6 what exactly she relied on to her detriment. The only thing Plaintiff specifically  
7 references is her request for the Statement of Probable Cause, which she wanted  
8 despite her pre-existing belief that essentially everyone involved was lying. There  
9 is simply no allegation that Defendants took any measure that would prevent  
10 Plaintiff from filing suit, as Plaintiff's complaint plainly states she knew her rights  
11 were violated by April 23, 2013 and nothing suggests she could not have filed suit  
12 before the statute of limitations ran.<sup>7</sup> Moreover, there is no allegation of  
13 affirmative misconduct. Finally, even if Plaintiff could show such, there is not "a  
14 serious injustice", *Amaro*, 653 F.3d at 813, as Plaintiff was aware of her claim and  
15 could have sought the information through discovery after filing suit or by filing a  
16 public records act claim.

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17  
18 <sup>7</sup> Notably, Plaintiff was able to file a claim with the state before the statute of  
19 limitations had run. ECF No. 47 at 3. She was then given notice that her claims  
20 were inadequate months before the statute of limitations ran. ECF No. 47 at 3.

1 **C. Equitable Tolling**

2 “Equitable tolling is a remedy that permits a court to allow an action to  
3 proceed when justice requires it, even though a statutory time period has elapsed.”  
4 *In re Bonds*, 165 Wash.2d 135, 141 (2008) (citing *In re Pers. Restraint of Carlstad*,  
5 150 Wash.2d 583, 593 (2003)). Equitable tolling “acts as an exception to the  
6 statute of limitations that should be used sparingly and does not extend broadly to  
7 allow claims to be raised except under narrow circumstances.” *In re Bonds*, 165  
8 Wash.2d at 141. The rule is only applied “when justice requires.” *Millay v. Cam*,  
9 135 Wash.2d 193, 206 (1998) (citations omitted). “The predicates for equitable  
10 tolling are bad faith, deception, or false assurances by the defendant and the  
11 exercise of diligence by the plaintiff.” *Id.* (citation omitted; emphasis added). “In  
12 Washington equitable tolling is appropriate when consistent with both the purpose  
13 of the statute providing the cause of action and the purpose of the statute of  
14 limitations.” *Id.* (citation omitted). The proponent of the rule has a “high burden”  
15 of demonstrating delay was a result of bad faith, deception, or false assurances. *In*  
16 *re Bonds*, 165 Wash.2d at 144.

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1           **1. *Concealment - delay<sup>8</sup> in filing public record request***

2           Plaintiff appears to argue that the claims of Malicious Prosecution, Abuse of  
3 Process and Conspiracy were tolled until the third week in May of 2013, by relying  
4 on a theory of “Concealment” based on RCW 4.1.180. ECF No. 47 at 4. Plaintiff  
5 argues:

6           In this case defendant’s efforts to thwart Ms. Powell’s pre-filing  
7 investigation fit neatly into Concealment . . . Defendant City’s dishonesty,  
8 coupled with Ms. Powell’s inexperience, compounded the difficulty of Ms.  
9 Powell’s investigation. Typically, the clock for filing would begin to run  
were it not for the outright refusal of Defendant City Pasco to fulfill lawful  
public records requests.

10 ECF No. 47 at 3-4 (citing *Wallace v. [City of Chicago]*, 440 F.3d 421 (7th Cir.  
11 2007); and RCW 4.16.180). As noted above, Plaintiff attempts to tie her alleged  
12 delayed or denied access to public records to equitable estoppel and tolling.  
13 Estoppel is addressed above, tolling will now be addressed.

14 //

15  
16 <sup>8</sup> Plaintiff states that the receipt of some documents were delayed while some  
17 were denied. ECF No. 47 at 3-4. Because Plaintiff only alleges equitable tolling  
18 until the third week of May 2013, she must only be complaining about the delayed  
19 documents. Regardless, Plaintiff was able to file the instant suit without the  
20 allegedly denied record request, suggesting there was no prejudice either way.

1 Plaintiff cites RCW 4.16.180, arguing that the City's allegedly improper  
2 delay fits under concealment. RCW 4.16.180 provides, in full:

3 If the cause of action shall accrue against any person who is a nonresident of  
4 this state, or who is a resident of this state and shall be out of the state, or  
5 concealed therein, such action may be commenced within the terms herein  
6 respectively limited after the coming, or return of such person into the state,  
7 or after the end of such concealment; and if after such cause of action shall  
8 have accrued, such person shall depart from and reside out of this state, or  
9 conceal himself or herself, the time of his or her absence or concealment  
10 shall not be deemed or taken as any part of the time limit for the  
11 commencement of such action.

12 Clearly, concealment in this statute refers to concealment of a person; this does not  
13 align with Plaintiff's view that this statute governs where records are allegedly  
14 concealed, as Plaintiff appears to argue.<sup>9</sup>

15 Moreover, the alleged delay for the record request does not justify tolling,  
16 even if wrongfully withheld. Importantly, Plaintiff was not prejudiced by the  
17 alleged one-month delay (Plaintiff claims the action is tolled for nearly one-month,  
18 only), as she had three years to file suit, but failed to do so; and she has provided  
19 no explanation as to how the claims were prejudiced, thus failing to meet her "high  
20 burden" in showing delay was a result of affirmative misconduct or that justice  
mandates application of the doctrine of equitable tolling. *In re Bonds*, 165

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<sup>9</sup> The reference to RCW 4.16.180 could have been a mistake, as concealment  
can be relevant for equitable estoppel.

1 Wash.2d at 144. Moreover, if the records were wrongly withheld, she could have  
2 pursued a public record request act claim. This strongly suggests a lack of  
3 diligence on Plaintiff's part, as is required for the application of equitable tolling.  
4 *Millay v. Cam*, 135 Wash.2d at 206 (citations omitted).

5 Further, Ms. Powell knew of her injuries with respect to the City before  
6 filing the public record requests, as she already believed they were asserting a  
7 series of false charges based on alleged fabrications. ECF No. 47 at 4. The record  
8 requests relate to her potentially proving her case; it did not have a bearing on  
9 whether she knew she had a claim nor did it ultimately prejudice her ability to  
10 timely bring the claim, as indicated by her attempt in December of 2015. ECF No.  
11 47-1. Plaintiff could have easily filed suit and sought the records via traditional  
12 discovery mechanisms. There is no injustice here. *In re Bonds*, 165 Wash.2d at  
13 141 (doctrine applies only "when justice requires it . . ."); *Millay v. Cam*, 135  
14 Wash.2d at 206 (same).

## 15 ***2. Alleged Subsequent Discovery***

16 Plaintiff further argues that the "dismissal of claims against Defendant  
17 Ellerd was improper and represents a clear misinterpretation [of] the law as it  
18 relates to the tolling of limitations." ECF No. 46 at 7. Plaintiff explains:

19 Ms. Powell was presented with a Stipulated Order of Continuance on April  
20 23, 2013. Ms. Powell told Defendant Ellerd that signing such a document  
was wrong. Ms. Powell, however, believed on April 23[, 2013] that

1 Defendant Ellerd made a good faith effort toward a demotion of the charges,  
2 not presented Ms. Powell with a new one.

3 ECF No. 46 at 7. However, Plaintiff also states:

4 Defendant Ellerd knew that Ms. Powell did not fully understand the charges  
5 and accusations the police made from their meeting. Ms. Powell vehemently  
6 denied the statement that was read to her in their meeting. Again, Defendant  
7 Ellerd did nothing.”

8 ECF No. 47 at 4, fn. 1. Plaintiff states that “[r]eview after the fact of the files  
9 related to Ms. Powell’s case left Plaintiff no doubt that Defendant Ellerd knew or  
10 should have known her actions were unlawful on April 23[, 2013].” ECF No. 46 at  
11 8.

12 As Plaintiff’s own words show, Plaintiff knew of the alleged misstatements  
13 and Defendant Ellerd’s alleged failures as of April 23, 2013. Plaintiff does not  
14 reveal when she reviewed the file, which she apparently now claims is the proper  
15 date of accrual; nor does she explain how the file revealed anything she did not  
16 already know. Moreover, the test for accrual is an objective one: when the  
17 Plaintiff should have known she had a claim. As Plaintiff notes, she told  
18 Defendant Ellerd signing the document was wrong and that she vehemently denied  
19 the statements while Defendant Ellerd allegedly did nothing. This is sufficient  
20 information for a reasonable person to be aware of the claims put forward by  
Plaintiff.

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1           **3. *Ineffective assistance; misrepresentation***

2           In Plaintiff's Notice of Intention to File a Motion for Rule 11 Sanctions  
3 (ECF No. 47), Plaintiff argues that in response to the alleged mistreatment at her  
4 home and during her subsequent detention, "Ms. Powell filed a set of claims  
5 against Defendant City employees on May 2, 2016 [and that] Ms. Powell's  
6 investigation began almost immediately but was hindered by the ineffective  
7 assistance of counsel and misrepresentations by Defendant City Pasco." ECF No.  
8 47 at 2. She claims that "[t]he law dictates that Ms. Powell's claims were filed in a  
9 timely manner." ECF No. 47 at 2.

10          Plaintiff does not explain how her counsel's assistance was ineffective other  
11 than as described above, nor does she state what misrepresentations were made, let  
12 alone how these allegedly affected her investigation. ECF No. 47. Notably,  
13 Plaintiff knew about her harm with respect to the alleged mistreatment at the time  
14 of the mistreatment, and knew about the alleged fabrications underlying the  
15 Agreed Stipulation and Order of Continuance at the time of signing. *See* ECF No.  
16 17 at ¶ 140 (Plaintiff signed the Agreement in order to "begin to pursue justice  
17 against those that had violated her civil rights.").

18          Plaintiff elsewhere complains of "Defendant City's dishonesty", noting that  
19 "the clock for filing would begin to run were it not for the outright refusal of  
20 Defendant City Pasco to fulfill lawful public records." ECF No. 47 at 3.

1 Assuming this is the basis for Plaintiff's complaint of misrepresentation, this is  
2 fully addressed above. Otherwise, she has not put forward any substance from  
3 which this Court can glean a basis for tolling the statute of limitations, and it is her  
4 "high" burden to bear. *In re Bonds*, 165 Wash.2d at 144.

5 **4. *Filing claim with State***

6 Plaintiff cites California case law for the proposition that the statute of  
7 limitations is tolled when the "plaintiff reasonably and in good faith pursues one  
8 avenue when several are available." ECF No. 46 at 5 (citing *Addison v. State of*  
9 *California*, 578 P.2d 941 (Cal. 1978); and *Bollinger v. National Fire Ins. Co.*, 154  
10 P.2d 399 (Cal. 1994)). This is not the only element required by *Addison*, as the  
11 "application of the doctrine of equitable tolling requires timely notice, and lack of  
12 prejudice, to the defendant, and reasonable and good faith conduct on the part of  
13 the plaintiff." 578 P.2d 941, 943–44 (emphasis added). Importantly, this is not the  
14 law in Washington.

15 In Plaintiff's Notice to the Court (ECF No. 47), Plaintiff argues "Ms.  
16 Powell's claims tolled during the period they were improperly filed." ECF No. 47  
17 at 3. Plaintiff explains:

18 [Plaintiff] mistakenly believed that claims involving municipal employee  
19 violations of state law were filed with the state. She filed notice with the  
20 Attorney General on December 22, 2015. Ms. Powell was informed on  
February 2, 2016 by a claims officer that her claims had been denied  
because she had not named a state officer and refiled with the correct  
entities."

1  
2 ECF Nos. 47 at 3; 47-1. Even if this Court could change Washington law to match  
3 that of California, the rule would not aid Plaintiff, as there is no injustice since  
4 Plaintiff had considerable time to cure the apparent defect and file suit.  
5 Importantly, Plaintiff knew of the issue with her claim before the statute of  
6 limitations ran, but still did not timely file. ECF No. 47-1 at 1. Moreover, filing a  
7 claim with the state is generally a precursor to suit, not an alternative avenue.  
8 There is nothing to suggest the doctrine of equitable tolling should apply.

9 **5. *Duress***

10 Without citation, under the label of “Duress”, Plaintiff argues that the proper  
11 inquiry—presumably for the running of the statute of limitations—is whether a  
12 reasonable person in similar circumstances would behave in the same fashion.  
13 ECF No. 47 at 4. It is unclear how Plaintiff’s circumstances govern equitable  
14 tolling, and Plaintiff has not presented any particular circumstances indicating  
15 such, other than the arguments addressed elsewhere.

16 **D. Sanctions**

17 Plaintiff submitted a “Notice of Intention to File a Motion for Rule 11  
18 Sanctions” (ECF No. 47). While it is not clear whether this was intended as an  
19 actual Motion rather than a mere Notice, the Court will generously consider it a  
20 Motion. Upon review, the grounds stated in Plaintiff’s Motion (ECF No. 47) do

1 not provide any basis for sanctions. The Sanctions appear to be based on  
2 Plaintiff's tolling arguments addressed above. ECF No. 47 at 3-4. Plaintiff  
3 essentially argues that Defendants Motion to Dismiss (ECF No. 40) is sanctionable  
4 because it does not address Plaintiff's tolling issue, which she did not bring up  
5 until after Defendants filed their Motion to Dismiss (ECF No. 40). *Compare* ECF  
6 No. 37, *and* ECF No. 40, *with* ECF No. 47. This is not Defendant's obligation, and  
7 nothing suggests the pleading was submitted in bad faith or for an improper  
8 purpose. Rather, the Motion has merit, and it is Plaintiff's burden to establish  
9 tolling of the statute of limitations. *In re Bonds*, 165 Wash.2d at 144.

#### 10 **E. Motion to Dismiss**

11 Defendants city of Pasco, Robert Metzger, Kenneth R. Roske, Dean S.  
12 Perry, Brian Smith, and Jesus Romero move the Court to dismiss Plaintiff's claims  
13 pursuant to FRCP 12(b)(6). ECF No. 40. For the reasons discussed above and in  
14 the Court's previous Order (ECF No. 39), Defendants' Motion to Dismiss (ECF  
15 No. 40) is **GRANTED**. The statute of limitations has run, and Plaintiff has not  
16 met her "high" burden in showing equitable tolling of the statute of limitations. *In*  
17 *re Bonds*, 165 Wash.2d at 144.

#### 18 **F. Summary Judgment**

19 Ms. Powell moves the Court for judgment on the pleadings pursuant to Fed.  
20 R. Civ. P. 12(c) against Defendant Ellerd and Defendant City Pasco. ECF Nos. 50;

1 51. Plaintiff contends that there is no genuine issue of material fact concerning  
2 Plaintiff's claims against Defendant Ellerd and Defendant City of Pasco. ECF  
3 Nos. 50; 51. While Plaintiff is correct that there is no issue of *material* fact, this is  
4 only because her claims are barred by the statute of limitations, as this Court has  
5 already found with respect to Defendant Ellerd, ECF No. 39, so judgment as a  
6 matter of law is proper, but only for the Defendants.

#### 7 **G. Remaining Defendants**

8 The only remaining Defendants in this case are Wesley C. Powell and John  
9 Does 1-6. None of the John Does have been identified, let alone timely served  
10 with process. The Court allowed Plaintiff additional time, "no later than February  
11 8, 2017", to properly serve Wesley C. Powell. ECF No. 38. No evidence of  
12 proper service has been filed with the Court. Accordingly, pursuant to Fed. R. Civ.  
13 P. 4(m), Wesley C. Powell and John Does 1-6 are **DISMISSED** without prejudice.

#### 14 **H. Revocation of *In Forma Pauperis* Status**

15 Pursuant to 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken *in forma*  
16 *pauperis* if the trial court certifies in writing that it is not taken in good faith." The  
17 good faith standard is an objective one, and good faith is demonstrated when an  
18 individual "seeks appellate review of any issue not frivolous." *See Coppedge v.*  
19 *United States*, 369 U.S. 438, 445 (1962). For purposes of 28 U.S.C. § 1915, an  
20

1 appeal is frivolous if it lacks any arguable basis in law or fact. *Neitzke v. Williams*,  
2 490 U.S. 319, 325 (1989).

3 The Court finds that any appeal of this Order would not be taken in good  
4 faith and would lack any arguable basis in law or fact. Accordingly, the Court  
5 hereby revokes Plaintiff's *in forma pauperis* status. If Plaintiff wishes to pursue an  
6 appeal, she must pay the requisite filing fee.

7 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 8 1. Plaintiff's Motion for New Trial (ECF No. 41) and corresponding  
9 Motions (ECF No. 46; 47; 48; 49) are **DENIED**.
- 10 2. Plaintiff's Motions for Summary Judgment (ECF No. 50; 51) are  
11 **DENIED**.
- 12 3. Defendants' Motion to Dismiss (ECF No. 40) is **GRANTED**.
- 13 4. Defendants Wesley C. Powell and John Does 1-6 are **DISMISSED**  
14 without prejudice.
- 15 5. The Court hereby **REVOKES** Plaintiff's *in forma pauperis* status.

16 The District Court Executive is directed to enter this Order and Judgment  
17 accordingly, furnish copies to counsel, and **Close** the file.

18 **DATED** March 17, 2017.



*Thomas O. Rice*  
THOMAS O. RICE  
Chief United States District Judge